

**MINUTES OF
FAIRFAX COUNTY PLANNING COMMISSION
WEDNESDAY, FEBRUARY 2, 2005**

UNAPPROVED
FEBRUARY 23, 2005

PRESENT: Walter L. Alcorn, Commissioner At-Large
John R. Byers, Mount Vernon District
Suzanne F. Harsel, Braddock District
James R. Hart, Commissioner At-Large
Nancy Hopkins, Dranesville District
Ronald W. Koch, Sully District
Kenneth A. Lawrence, Providence District
Rodney L. Lusk, Lee District
Peter F. Murphy, Jr., Springfield District

ABSENT: Frank A. de la Fe, Hunter Mill District
Janet R. Hall, Mason District
Laurie Frost Wilson, Commissioner At-Large

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The meeting was called to order at 8:16 p.m. by Chairman Peter F. Murphy, Jr., in the Board Auditorium of the Fairfax County Government Center at 12000 Government Center Parkway, Fairfax, Virginia 22035.

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COMMISSION MATTERS

At the request of Commissioner Wilson, Commissioner Hart MOVED THAT THE DECISION ONLY ON THE PUBLIC FACILITIES AMENDMENTS ON DRAINAGE DIVIDES, POSTING HANDICAP SIGNS, AND CASH DEPOSITS, BE FURTHER DEFERRED TO A DATE CERTAIN OF FEBRUARY 17, 2005, WITH THE RECORD REMAINING OPEN FOR WRITTEN COMMENT.

Commissioners Byers and Lusk seconded the motion which carried unanimously with Commissioner Alcorn not present for the vote; Commissioners de la Fe, Hall, and Wilson absent from the meeting.

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Commissioner Hart noted that since the proposed Zoning Ordinance Amendment on variance uses had been authorized, the Planning Commission had received many citizen comments and constructive suggestions. He reported that staff had created a website for the proposed amendment with frequently asked questions and had conducted a public information session, held on January 31, 2005, in which there was a standing room only crowd, including seven staff members, six Planning Commissioners, and two Board of Supervisors' members.

Commissioner Hart clarified that lot sizes would not be considered in the proposed Zoning Ordinance Amendment; he MOVED THAT THE PUBLIC HEARING ON THE ZONING ORDINANCE AMENDMENT ON VARIANCE USES, BE DEFERRED INDEFINITELY, WITH THE RECORD REMAINING OPEN FOR WRITTEN COMMENT.

SECOND, THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT DEFER ITS PUBLIC HEARING INDEFINITELY.

THIRD, THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS REAUTHORIZE THE AMENDMENT, FOR READVERTISING, AFTER SUCH TIME AS STAFF HAS REVIEWED THE SCOPE OF ADVERTISING ISSUE, AND MADE APPROPRIATE RECOMMENDATIONS, AND THAT THE COMMISSION SUGGEST IN THE MEANTIME THAT STAFF ATTEMPT TO DRAFT ANY READVERTISING IN SUCH A MANNER SO AS TO ALLOW THE COMMISSION TO CONSIDER POTENTIAL MODIFICATIONS TO THE ORIGINAL ADVERTISED WORDING, OR TO CONSIDER MULTIPLE OPTIONS IN ITS RECOMMENDATION, AND THAT THE COMMISSION SUGGEST, WITHOUT LIMITATION, EVALUATION OF THE FOLLOWING TOPICS:

A) CONSIDERATION OF APPROPRIATE LANGUAGE IN SECTION 8-920 AND 8-922, OR OTHER APPROPRIATE SECTIONS, WHICH WOULD REQUIRE THAT THE APPLICATION PROPERTY, AS OF THE EFFECTIVE DATE OF THE ZONING ORDINANCE, DEMONSTRATE EXCEPTIONAL NARROWNESS, SHALLOWNNESS, SIZE, SHAPE, OR TOPOGRAPHIC CONDITIONS, OR AN EXTRAORDINARY SITUATION OR CONDITION OF THE SUBJECT PROPERTY AND THAT THE REQUESTED MODIFICATION OF THE ORDINANCE WILL RELIEVE THE IMPACT OF SUCH CONDITION;

B) CONSIDERATION OF APPROPRIATE LANGUAGE WHICH WOULD PERMIT, AS AN OPTION, ADOPTION OF SOMETHING LESS THAN THE ENTIRETY OF EITHER OF THE PROPOSED OPTIONS FOR LOT WIDTH MODIFICATION, OR SOME COMBINATION OF THE PROPOSED SPECIAL EXCEPTION OR SPECIAL PERMIT OPTIONS, OR PORTIONS OF EITHER;

C) CONSIDERATION OF APPROPRIATE LANGUAGE, IF FEASIBLE, WHICH COULD PERMIT ADDITIONAL CRITERIA OR RESTRICTIONS, OR OTHER LIMITATIONS ON THE AVAILABILITY OF SUCH APPLICATIONS; AND

D) SUCH OTHER OPTIONS OR ADDITIONAL CRITERIA AS THE BOARD MAY DEEM FEASIBLE OR APPROPRIATE AT THE TIME OF REAUTHORIZATION.

Commissioners Hopkins, Byers, and Lawrence seconded the motion which carried unanimously with Commissioner Alcorn not present for the vote; Commissioners de la Fe, Hall, and Wilson absent from the meeting.

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Commissioner Hart also announced that the draft Environmental Impact Reports on both the Battlefield Bypass and the Dulles Airport projects were available online. He added that he could later provide the website address to Commissioners, if desired.

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Chairman Murphy MOVED THAT THE DECISION ONLY ON RZ 2004-SP-001, GHOLAMREZA KHAMESI, BE FURTHER DEFERRED TO A DATE CERTAIN OF FEBRUARY 3, 2005, WITH THE RECORD REMAINING OPEN FOR WRITTEN COMMENT.

Commissioner Byers seconded the motion which carried unanimously with Commissioner Alcorn not present for the vote; Commissioners de la Fe, Hall, and Wilson absent from the meeting.

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Chairman Murphy mentioned that Providence District Supervisor Linda Q. Smyth had introduced a motion to the Board of Supervisors, which had been unanimously adopted, to appoint a workgroup to examine the history, efficacy, and viability of the Transportation Demand Management (TDM) Program in Fairfax County. He noted that the first TDM Workgroup meeting would be held on February 8, 2005, at 11:30 a.m. in Conference Room 337 in the Herrity Building. He encouraged Commissioners to attend and suggested that the joint Committee of the Planning Commission and the Transportation Advisory Commission be kept informed of the Workgroup's discussions and issues.

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FS-S04-70 - SPRINT PCS, Balmoral Greens Avenue

Chairman Murphy MOVED CONSENT AGENDA ITEM, FS-S04-70.

Commissioner Byers seconded the motion which carried unanimously with Commissioner Alcorn not present for the vote; Commissioners de la Fe, Hall, and Wilson absent from the meeting.

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ORDER OF THE AGENDA

Chairman Murphy noted that the only item on tonight's agenda was a concurrent public hearing on SE 2003-LE-028, SE 2003-LE-029, and 2003 LE-031, Silvio Diana.

This order was accepted without objection.

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SE 2003-LE-028 - SILVIO DIANA - Appl. under Sect. 2-904 of the Zoning Ordinance to permit uses in a floodplain. Located at 7828, 7901, 7909, and 7915 Cinder Bed Rd. on approx 3.18 ac. of land zoned I-6 and R-1. Tax Map 99-2 ((3)) 1 pt., 2 pt., 3A pt. and 3B pt. (Concurrent with SE 2003-LE-029 and SE 2003-LE-031.) LEE DISTRICT.

SE 2003-LE-029 - SILVIO DIANA - Appl. under Sect. 9-616 of the Zoning Ordinance to permit a driveway on residentially-zoned land for uses in an industrial district. Located at 7909 and 7915 Cinder Bed Rd. on approx. 14,628 sq. ft. of land zoned R-1. Tax Map 99-2 ((3)) 1 pt. and 2 pt. (Concurrent with SE 2003-LE-028 and SE 2003-LE-031.) LEE DISTRICT.

SE 2003-LE-031 - SILVIO DIANA - Appl. under Sect. 5-604 of the Zoning Ordinance to permit a heavy industrial use (concrete mixing or batching plant). Located at 7828, 7901, 7909, and 7915 Cinder Bed Rd. on approx. 12.05 ac. of land zoned I-6. Tax Map 99-2 ((3)) 1 pt, 2 pt, 3A pt and 3B. (Concurrent with SE 2003-LE-028 and SE 2003-LE-029.) LEE DISTRICT. JOINT PUBLIC HEARING.

Lynne J. Strobel, Esquire, with Walsh, Colucci, Lubeley, Emrich & Terpak, PC, reaffirmed the affidavit dated October 26, 2004. There were no disclosures by Commission members.

Catherine E. Lewis, Zoning Evaluation Division, Department of Planning and Zoning (DPZ), presented the staff report, a copy of which is in the date file. She noted that staff recommended denial of the applications because the applicant had unlawfully expanded his business without amending his special permit, filled in the floodplain without approval, established industrial uses in the R-1 zoned portions of the site, leased out other portions of his site to other users without approval, and current business operations threatened the health of Long Branch stream.

Ms. Strobel stated that the Comprehensive Plan text which Ms. Lewis had referred to in her presentation was "general text" only. She reviewed the history of the subject property, which had been established in 1963.

Ms. Strobel said the steps which had been taken to address staff's concerns included numerous visits to the property by Fairfax County staff and Planning Commissioners; removal of all materials from the floodplain; location of only a portion of an internal access road within the floodplain; removal of one of the existing stream crossings; and removal of Campbell's Gas, a business located along Cinder Bed Road on industrially zoned property.

In response to a question from Commissioner Lusk, Ms. Strobel said that the eviction of Campbell's Gas had been stayed pending appeal and should be scheduled for trial in Circuit Court within 90 to 120 days.

Continuing her presentation, Ms. Strobel indicated that the applicant had completed a Phase I and Phase II environmental report and materials identified in that report had been removed by Atlas Environmental Services, LLC, as indicated in their "Time and Material Work Report," a copy of which is in the date file.

In response to a question from Commissioner Lusk, Ms. Strobel said that petroleum contaminants such as an oil drum and contaminated soils had been removed.

Ms. Strobel disclosed that in an attempt to address concerns about expansion, the applicant had removed two of three proposed buildings, labeled areas for concrete storage, and eliminated a majority of the by-right uses in the I-6 District as reflected on the revised special exception plat, distributed tonight, a copy of which is in the date file. She also indicated that she would provide staff documentation that the resident of the existing dwelling unit on the site was employed by American Stone Inc. She stated that the applicant had tested the on-site well and a consultant had examined the septic field and only found an off-site contaminate called MTBE, which the applicant would seek to remove.

Commissioner Lusk commented that although the septic field was functioning properly at the present time, it had only been designed for use of up to 12 employees. He said with close to 70 employees currently on-site, the septic field could be compromised, causing great environmental hazards to the soil and the waterway. He suggested that this issue be further discussed before a decision was made on this case.

Responding to a comment by Ms. Lewis concerning the analysis performed on the septic field, Ms. Strobel reassured staff and the Commission that the applicant would follow up on this issue with the Health Department.

John R. Bell, Planning Division, DPZ, said that according to a February 2, 2005 letter from Soil Consultants, Inc., the septic field did not exist in the location where it had been approved and had been moved without Health Department approval. He added that the consultant had recommended the septic system be moved from its current location because it was under a heavily-trafficked road and their analysis had not alleviated staff's concerns about the adequacy of the existing septic field. (A copy of the letter is in the date file.)

Responding to a question from Commissioner Hart, Ms. Strobel noted that the applicant believed the existing septic field was adequate, but a possible solution to any issues raised by the Health Department would be to connect to public sewer and water.

In response to a question from Commissioner Hart, Ms. Lewis commented that she doubted the septic field was functioning properly since it was covered by a road.

Ms. Strobel stated that the applicant would continue to work with staff to address outstanding issues. She said she felt that the applicant should be treated differently than the other businesses located along Cinder Bed Road because American Stone Inc. had been legally established in 1963 and provided a valuable service to Fairfax County; site plan approval, building permits, and occupancy permits had been obtained; monthly reports had been submitted to the Department of Environmental Quality; the property had been significantly cleaned up; and, was planned for industrial use. She noted that the applications would be reviewed by the Lee District Land Use and Transportation Advisory Committee. She then presented photographs of the clean-up that had taken place on the site.

Responding to questions from Commissioner Lusk, Joseph Bakos, Zoning Administration Division, DPZ, stated that on February 2, 2005 materials were still being stored in the floodplain, as noted through site inspection.

Ms. Lewis rebutted Ms. Strobel's earlier statement that the language she had read from the Comprehensive Plan was "general text." She said it was specific text about Land Unit J and recognized the environmental constraints associated with industrial use.

Dino Diana, who currently operated American Stone Inc., responded to questions from Commissioner Lusk about the disposal of the remaining products being stored in the floodplain. He assured the Commission that he did not want to go through another Special Exception application process again and indicated his desire to resolve these issues so that he could continue to operate his business. Commissioner Lusk concurred and suggested that staff, Mr. Diana, and Ms. Strobel continue discussion to resolve all outstanding issues.

Commissioner Hart recommended that the applicant remove all materials from the floodplain as soon as possible.

In response to a question from Commissioner Lawrence, Mr. Bakos said that the applicant had been cited by the County for zoning violations twice in the 1990s and once in 2002.

Mr. Diana responded to questions from Commissioner Lawrence about storage in the floodplain and reiterated his desire to resolve this issue and operate his business within limitations set forth by County staff.

Ms. Lewis expressed concern about the applicant's ability to dispose of or store products on the property. She said solutions included evicting tenants, reconfiguring the business on the site, or purchasing an adjacent lot which had access to Cinder Bed Road. She said staff's recommendation of denial was based on the belief that the applicant would not implement or follow through with their proposed conditions.

Commissioner Lawrence recommended that staff and the applicant agree on a set of conditions. Ms. Lewis concurred and suggested that the applicant first acknowledge that his business had been expanded illegally and a traffic circulation area was needed due to "self-imposed barriers." She also said the applicant might need to evict tenants from the site in order to provide more storage areas, but noted that he had seemed unwilling to do so and instead had continued operating as he had in the past. Mr. Diana responded that if storage in the floodplain was not allowed, he would store products in other permitted areas.

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Chairman Murphy relinquished the Chair to Vice Chairman Byers.

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Mr. Diana responded to questions from Commissioner Koch about the other businesses located on the subject property and the location of Campbell's Gas.

Responding to questions from Commissioners Koch and Hart, Ms. Lewis explained that the applicant had asked for a waiver to allow the single-family detached residence on lot 9 to remain occupied and that staff required documentation stating that the resident was employed by American Stone Inc.

In response to another question from Commissioner Hart, Mr. Bakos noted that the occupancy of the house on lot 9 had not been included in the zoning violation notice issued to American Stone Inc. in 2002.

Mr. Diana distributed an article about American Stone Inc. from *The Springfield Independent* dated March 2, 1967, a copy of which is in the date file. He noted that buildings could not be easily reconfigured due to the age of the facility and although he wanted to resolve issues and continue to be part of the community, there were certain limitations of what could be done within the site. He added that it would be difficult to accommodate every request.

Mr. Diana responded to questions from Commissioner Harsel regarding the Board of Supervisors' approval of the 1977 application to store in the floodplain, the expansion of the originally approved area, and the area currently used for storage.

Responding to a question from Commissioner Harsel, Mr. Bakos said that as of February 1, 2005, materials still remained in the floodplain which were in the process of being removed.

In response to another question from Commissioner Harsel, Mr. Diana explained that only a very small number of products now remained in the floodplain and he reassured her that American Stone Inc. would no longer store products illegally and would continue to dispose of or move products onto the upper lot or off-site.

Responding to a question from Commissioner Koch, Mr. Diana agreed to hook up to public sewer and water if the existing septic field became inadequate.

Responding to questions from Commissioner Hart, Ms. Strobel noted that the applicant wanted to work with staff to produce a set of development conditions to resolve problems such as the location of a part of the internal access road in the floodplain.

In response to another question from Commissioner Hart, Ms. Strobel stated that if the internal access road or Campbell's Gas were to be removed, that area would be restored. Ms. Lewis said if the applicant continued to use the road, staff believed that it would enable him to store in the floodplain again and use the road as the primary means of access.

In response to further questions from Commissioner Hart, Ms. Strobel said currently there were two road crossings of Long Branch stream and that the applicant had agreed to remove and restore the one near Campbell's Gas.

Vice Chairman Byers called for speakers from the audience, but received no response. He then called for concluding remarks from Ms. Strobel, who declined. There were no further comments or questions from the Commission and staff had no closing remarks; therefore, Vice Chairman Byers closed the public hearing and recognized Commissioner Lusk for action on this case. (A verbatim excerpt is in the date file.)

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Commissioner Lusk MOVED THAT THE PLANNING COMMISSION DEFER DECISION ONLY ON SE 2003-LE-028, SE 2003-LE-029, AND SE 2003-LE-031, TO A DATE CERTAIN OF MARCH 17, 2005, WITH THE RECORD REMAINING OPEN FOR WRITTEN COMMENT.

Commissioners Koch and Lawrence seconded the motion which carried unanimously with Commissioner Murphy not present for the vote; Commissioners de la Fe, Hall, and Wilson absent from the meeting.

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CLOSING

February 2, 2005

The meeting was adjourned at 9:41 p.m.

Peter F. Murphy, Jr., Chairman

Suzanne F. Harsel, Secretary

Audio and video recordings of this meeting are available at the Planning Commission Office,
12000 Government Center Parkway, Suite 330, Fairfax, Virginia 22035.

Minutes by: Kara A. DeArrastia

Approved on: _____

Linda B. Rodeffer, Clerk to the
Fairfax County Planning Commission